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No. 82-898

IN THE

Supreme Court of the United States

October Term, 1982

MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES,

Appellant,

vs.

LEON W. KNIGHT, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

REPLY BRIEF OF MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES

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ARGUMENT

I. THE MEET AND CONFER SYSTEM DOES NOT VIOLATE PLAINTIFFS' RIGHT OF EQUAL PROTECTION BECAUSE A FUNDAMENTAL RIGHT IS NOT INVOLVED AND BECAUSE OF THE EXCLUSIVE REPRESENTATIVE'S SPECIAL RESPONSIBILITIES.

The plaintiffs have conceded that they do not have an unfettered right under the First Amendment to require their employer, the Minnesota State Board for Community Colleges (Board), to meet and confer with them. (Brief for the Appellees, Case No. 82-898, p. 5). Moreover, they do not refute the Board's analysis and conclusion that community college instructors are not constitutionally entitled to engage their public employer in a private dialogue.

The plaintiffs have abandoned the district court's First Amendment analysis of this case and have substituted instead an equal protection analysis to justify the district court's decision. They now contend that the Minnesota Public Employment Labor Relations Act as applied by the Board and the Minnesota Community College Faculty Association (MCCFA) discriminates on the basis of associational preference, lacks a rational basis, and serves no compelling state interest. This argument is simply inadequate to rescue the district court's decision.

This Court has previously considered the equal protection argument raised herein by plaintiffs. *Perry Education Association v. Perry Local Educators' Association*, —— U.S. ——, 103 S. Ct. 948 (1983). *See* Brief of Appellant Minnesota State Board for Community Colleges, pp. 24-32. In *Perry*, a faculty union claimed, among other things, that

limiting access to the school district's interschool mail system solely to the faculty's exclusive representative violated the rival union's rights under the Equal Protection Clause of the Fourteenth Amendment. This contention was rejected in *Perry* as it should be here. Because the rival union did not have a First Amendment right of access to the interschool mail system, the grant of such access to the exclusive representative did not violate a fundamental right of the rival union. *Id.* at ——, 103 S. Ct. at 959. Accordingly, the test this Court applied to judge the constitutionality of the access limitation was whether that limitation rationally furthered a legitimate state purpose. *Id.* at ——, 103 S. Ct. at 960. The Court concluded that the special responsibilities imposed on the faculty's exclusive representative was a legitimate state purpose which was rationally furthered by the limitation. As a result, there was no violation of the Equal Protection Clause. *Id.* at ——, 103 S. Ct. at 960.

The plaintiffs' equal protection claim herein fails for the same reasons the rival union's claim failed in *Perry*. As explained in the Board's brief on the merits, restricting meet and confer to the exclusive representative does not infringe any fundamental right of the plaintiffs. Brief of Appellant Minnesota State Board for Community Colleges, pp. 27-35. Participation in meet and confer is not in itself protected by the First Amendment. Accordingly, no fundamental right is implicated justifying stricter review than the rational basis standard applied in *Perry*. The special responsibilities imposed by PELRA on the MCCFA as exclusive representatives are the same as those imposed upon the representative in *Perry*. These special responsibilities are rationally furthered by limiting access to the meet and confer process exclusively to the MCCFA. Therefore, as in

Perry, the requirements of the Equal Protection Clause are satisfied.

The plaintiffs' failure to even mention, much less distinguish, the decision in *Perry* is revealing. The rejection of the rival union's equal protection claim in *Perry* strongly supports the rejection of the plaintiffs' equal protection claim here and a reversal of the district court's decision.

II. THE ISSUE OF AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY IS NOT PROPERLY PRESENT IN THIS CASE AS IT HAS BEEN RAISED AND REJECTED IN CASE NO. 82-901.

Whether PELRA establishes a corporative (or fascist-syndicalist) system of economic-political organization is a question which has been pressed by the plaintiffs in their brief in case number 82-977 which has been consolidated with this case. This issue was raised and decided in this Court's summary affirmance of the district court's decision in case number 82-901. Insofar as it has been repeated in this appeal for the purpose of persuading the Court to reverse its decision in case number 82-901, it is inappropriate.

Plaintiffs' reliance on *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) and *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936) to support their attack on the meet and confer system is misplaced. The Board respectfully directs the Court to the motions to affirm of the Board and of the Labor Organizations in case number 82-901 for a refutation of the plaintiffs' argument. The system of exclusive representation enacted by the State of Minnesota is essentially indistinguishable from the system upheld by this Court in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). The plaintiffs' argument to the contrary is without merit.

CONCLUSION

For the reasons stated, the plaintiffs have failed to establish a basis for sustaining the district court's decision that the meet and confer system as applied is unconstitutional. The district court's decision should be reversed.

Dated: October 21, 1983.

Respectfullly submitted,

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